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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/780,177

02/09/2001

James D. Hooberman

HCI-10002/38

8403

25006

7590

05/02/2008

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EXAMINER

USTARIS, JOSEPH G

ART UNIT

PAPER NUMBER

2623

MAIL DATE

DELIVERY MODE

05/02/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/780,177	<b>Applicant(s)</b> HOOBERMAN, JAMES D.	
	<b>Examiner</b> JOSEPH G. USTARIS	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 11, 2008 has been entered.

### ***Response to Arguments***

2. Applicant's arguments filed February 11, 2008 have been fully considered but they are not persuasive.

Applicant argues with respect to claims 1, 4, and 6 that the prior art does not disclose a visual stream incorporating patterns and changing colors in concert with the sound. However, upon further review of the prior art, Yoshida in view of Meier discloses that limitation in the claims. Yoshida in view of Meier discloses a visual stream that incorporates patterns and changing colors in concert with the sound (See Meier col. 17 lines 21-43).

Applicant also argues that patterned changing colors along with sound to induce sleep is not a predictable result and that patterns of light and color change are well known to be stimulative. Applicant also provides documents to show that patterns of light and color change are known to be stimulative. However, it is noted that Yoshida

already discloses that patterned changing of colors (e.g. color blue and the absence of blue) along with sound help to induce sleep (Col. 5, lines 18-30; Col. 7, lines 35-Col. 8, lines 60). Furthermore, the documents cited by the applicant do not give any information about the environment in which the patterns of light and color change are applied (e.g. what is the frequency in which the patterns of light and color change are applied to the subject). Yoshida does disclose that changing colors and sound together at frequencies known to induce sleep actually help to induce sleep (See rejection below). Therefore, applying patterns and color changes at frequencies known to induce sleep will help the user/subject fall asleep, based on the teaching from Yoshida.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 5982414) in view of [www.stanford.edu/~dement/sleeplinks.html](http://www.stanford.edu/~dement/sleeplinks.html) and Meier et al. (US005496962A).

Claim 1, Yoshida discloses a virtual sound system (see Fig. 1 and 2) comprising a network-based program (bi-directional signal distribution system; i.e. CATV or Internet; Col. 1, lines 56-Col. 2, lines 15) for generating repetitive sleep including sound

having a frequency between 3 and 30Hz at a user location (Col. 5, lines 18-30; Col. 7, lines 35-Col. 8, lines 60);

an access network for accessing the network-based program at the user location for generating the repetitive sleep inducing sound (Col. 9, lines 28-38).

Yoshida does not clearly disclose the web/internet link to information of sleep related research, sleep products and a sleep discussion chat room and a visual stream incorporating patterns and changing colors in concert with the sound.

Yoshida discloses the program could be link or delivered from Internet (Col. 9, lines 35-38). A Web link [www.stanford.edu/~dement/sleeplinks.html](http://www.stanford.edu/~dement/sleeplinks.html) discloses the use of the web page "Links to other sleep sites" to link to corresponding web sites for retrieving additional research information, to a Chat room/forum and product information of a particular topic of interest, i.e., sleep disorder issues, is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoshida to have URLs link [www.stanford.edu/~dement/sleeplinks.html](http://www.stanford.edu/~dement/sleeplinks.html) to related Web sites for the benefit of providing users with additional information related to sleep disorder issues.

Yoshida also discloses that the visual stream changes in concert with the sound (Col. 7, lines 35-50 and Col. 7, lines 59-Col. 8, lines 40). Meier et al. (Meier) also discloses a system that provides visual effects with sounds. Meier discloses that the visual stream incorporates patterns and changes colors in concert with the sound (See col. 17 lines 21-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system disclosed by Yoshida to

have the visual stream also incorporate patterns and change colors in concert with the sound, as taught by Meier, in order to enhance the video signal thereby increasing the interaction between the user and the system in order to efficiently convey certain frequencies to the user (See Yoshida col. 5 lines 18-41).

Claim 4, Yoshida further discloses a sound controller selected from the group consisting of volume control and sound play duration (see Fig. 4 with volume control and Fig. 5 for time duration of usage).

Claim 6, Yoshida further discloses an alarm clock routine (Col. 7, lines 19-22; Col. 8, lines 53-60).

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH G. USTARIS whose telephone number is (571)272-7383. The examiner can normally be reached on M-F 7:30-5 PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph G Ustaris/  
Primary Examiner, Art Unit 2623